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20 November 1978

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MEMORANDUM FOR:

[Redacted]

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FROM:

[Redacted]

Chief, Legislation Staff, OLC

SUBJECT:

Amendments to the So-called "Role of the Ambassador Legislation" and the Definition of "Chief of Mission"

REFERENCE:

State 287301, 110246Z November 1978

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1. [Redacted] P.L. 95-426, the "Foreign Relations Authorization Act, Fiscal Year 1979" was approved by the President on 7 October 1978. Two sections of that law relate to ambassadorial responsibilities. Section 116 amends the definition of "Chief of Mission" in paragraph (9) of Section 121 of the Foreign Service Act of 1946. Section 117 amends the so-called "Role of the Ambassador Legislation" (22 U.S.C. 2680a) by substituting the term "Chief of Mission" for "Ambassador" wherever the latter term appears. (Sections 116 and 117 of P.L. 95-426 are attached at Tab A.) Reference cable, State 287301, provides a Department of State explanation of Section 117 of P.L. 95-426 (Tab B).

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2. [Redacted] We considered the amendments cited above during our work on this bill (H.R. 12598) last summer and earlier this fall, and determined that the amendments were not objectionable, particularly given other serious problems in the bill. This determination was based on the fact that the changes were intended essentially to clarify--not change--the Role of the Ambassador Legislation to make clear that any individual heading a U.S. diplomatic outpost is entitled to be considered and treated as an Ambassador, even if that person, because of the nature of the U.S. presence, is not an Ambassador per se. In other words, even though the person heading the U.S. presence in such locations as Hong Kong or Peking is not an Ambassador, that person is the ranking U.S. official and should be considered as such.

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3. [Redacted] There are several relevant aspects of the legislative history on these provisions:

a. The House version of the legislation amended the definition of "Chief of Mission." The report of the House Committee on International Relations states that the amendment is intended "to include the head of any

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U.S. office abroad which is diplomatic in nature, such as the U.S. liaison office in Peking, ... and the independent reporting Consulates General in ... Hong Kong." The report goes on to note that this change is intended only "to clarify the authority of any individual heading a diplomatic outpost... whether or not that individual is an Ambassador" (emphasis added). (See pages 26-27 from the House report, at Tab C; the earlier definition is at page 506 of Tab D.)

b. The House bill also substituted "Chief of Mission" for "Ambassador" in 22 U.S.C. 2680a. The language from the House report concerning this amendment (pages 32-33 of Tab C) is quoted in reference State cable, attached at Tab B. If any of the legislative history is problematic, it is this language, which could be construed as requiring that any person serving even temporarily as the head of the U.S. diplomatic outpost (e.g., a DCM when the Ambassador is on leave) must be treated as the Ambassador for purposes of 22 U.S.C. 2680a.

c. The Senate version of the bill did not amend the definition of "Chief of Mission" but did amend the Role of the Ambassador Legislation (22 U.S.C. 2680a). The substantive amendments to that statute, relating to responsibilities to keep the Ambassador informed, were subsequently dropped. The amendment changing references to "Ambassador" to "Chief of Mission" in 22 U.S.C. 2680a remained in the bill. The Senate report, however, makes clear that this is a technical amendment. In other words, the amendment was not intended to change the substance of 22 U.S.C. 2680a--what must be reported to ambassadors--nor was it intended to expand the reporting; rather, it was intended merely to clarify that the person actually heading a U.S. diplomatic outpost should be considered an Ambassador (Tab E).

d. The conference report deals with the change in definition of "Chief of Mission" simply by repeating much of the language in the House report on this provision, since the Senate bill did not amend the definition (see page 49 of the conference report, at Tab F). On the matter of amending the Role of the Ambassador Legislation, the conference report notes that the "notwithstanding any other provision of law" language was dropped at conference (page 54 at Tab F). Since both the House and Senate bills contained the identical provision substituting "Chief of Mission" for "Ambassador" in 22 U.S.C. 2680a, this was not an issue at conference and consequently there is no conference report language on the matter.

In summary then, as regards sections 116 and 117 of P.L. 95-426: (1) the House report contains language supporting the position that the language is intended merely to clarify the ambassadorial-level status of Chiefs of Mission, but also language that could be construed as requiring that lower-level persons have a right to "22 U.S.C. 2680a information"; (2) the Senate report notes that the definition change is merely to clarify and that the change of designation in 22 U.S.C. 2680a is merely a technical change; and (3) the conference report reflects the House language on the definition change and is silent on the 22 U.S.C. 2680a language change.

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4. [] The legislative history on the matter raised in reference State cable is not dispositive of any questions that might develop as regards interpreting the requirements of 22 U.S.C. 2680a. A good case can be made that the change in definition of "Chief of Mission" and the substitution of that term in 22 U.S.C. 2680a, considered as a whole, are intended (1) to make absolutely clear that the head of a U.S. diplomatic outpost where there is no "Ambassador" is to be treated as an Ambassador, and (2) to make clear that a person acting as the Ambassador, even temporarily, in fact possesses "the authority to act in the absence of an Ambassador" (see final sentence of reference cable at Tab B).

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5. [] More importantly, it must be remembered that 22 U.S.C. 2680a is prefaced by the "under the direction of the President" clause; this would be relevant for purposes of interpreting the "Ambassador" to "Chief of Mission" language change just as it is for resolving problems that have arisen heretofore.

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6. [] We will be glad to discuss this further, and OLC stands ready to assist in drafting an explanatory cable to the field.

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Attachments:

As Stated

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INTERNAL USE ONLY

Public Law 95-426
95th Congress

An Act

To authorize appropriations for fiscal year 1979 for the Department of State, the International Communication Agency, and the Board for International Broadcasting, to make changes in the laws relating to those agencies, to make changes in the Foreign Service personnel system, to establish policies and responsibilities with respect to science, technology, and American diplomacy, and for other purposes.

Oct. 7, 1978

[H.R. 12598]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Foreign Relations
Authorization
Act, Fiscal Year
1979.

SHORT TITLE

SECTION 1. This Act may be cited as the "Foreign Relations Authorization Act, Fiscal Year 1979".

TITLE I—DEPARTMENT OF STATE

AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1979

SEC. 101. (a) There are authorized to be appropriated for the Department of State for the fiscal year 1979 to carry out the authorities, functions, duties, and responsibilities in the conduct of the foreign affairs of the United States, including trade negotiations, and other purposes authorized by law, the following amounts:

- (1) For "Administration of Foreign Affairs", \$849,118,000.
- (2) For "International Organizations and Conferences", \$412,826,000.
- (3) For "International Commissions", \$20,778,000.
- (4) For "Migration and Refugee Assistance", \$116,536,000.
- (5) For increases in salary, pay, retirement, and other employee benefits authorized by law, and for other nondiscretionary costs, such amounts as may be necessary.

(b) Amounts appropriated under this section are authorized to remain available until expended.

(c) Funds authorized to be appropriated for the fiscal year 1979 by paragraphs (1) through (4) of subsection (a) may be appropriated for the fiscal year 1979 for a purpose for which appropriations are authorized by any other of those paragraphs, except that the total amount appropriated for a purpose described in any of those paragraphs may not exceed by more than 10 percent the amount specifically authorized for that purpose by subsection (a).

SUPPLEMENTAL AUTHORIZATION FOR FISCAL YEAR 1978 FOR INTERNATIONAL ORGANIZATIONS AND CONFERENCES

SEC. 102. Section 101(a)(2) of the Foreign Relations Authorization Act, Fiscal Year 1978, is amended by striking out "\$389,412,000" and inserting in lieu thereof "\$426,687,000". 91 Stat. 844.

PUBLIC LAW 95-426—OCT. 7, 1978

92 STAT. 969

(b) (1) Paragraph (9) of section 5314 of title 5, United States Code, is amended by inserting "and Under Secretary of State for Management" immediately after "Programs".

(2) Paragraph (10) of section 5315 of such title is repealed.

(c) The amendments made by this section shall take effect on October 1, 1978.

Repeal.
5 USC 5315.
Effective date.
5 USC 5314 note.

ASSISTANT SECRETARY OF STATE FOR INTERNATIONAL NARCOTICS
MATTERS

SEC. 115. (a) There is established in the Department of State, in addition to the positions provided under the first section of the Act of May 26, 1949 (22 U.S.C. 2652), an Assistant Secretary of State for International Narcotics Matters, who shall be appointed by the President, by and with the advice and consent of the Senate. The Assistant Secretary shall be responsible for the overall coordination of the role of the Department of State in the international aspects of narcotics problems. 22 USC 2652a.

(b) (1) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(122) Assistant Secretary for International Narcotics Matters, Department of State."

(2) The amendment made by paragraph (1) of this subsection shall take effect on October 1, 1978. Effective date.
5 USC 5315 note.

DEFINITION OF CHIEF OF MISSION

SEC. 116. Paragraph (9) of section 121 of the Foreign Service Act of 1946 (22 U.S.C. 802(9)) is amended by striking out "or diplomatic agent" and inserting in lieu thereof "diplomatic agent, or the head of a United States office abroad which is designated by the Secretary as having a purpose diplomatic in nature".

RESPONSIBILITIES OF A CHIEF OF MISSION

SEC. 117. Section 16 of the Act entitled "An Act to provide certain basic authority for the Department of State", approved August 1, 1956 (22 U.S.C. 2680a), is amended—

(1) in paragraph (1) by striking out "Ambassador to" and inserting in lieu thereof "chief of mission (as defined in section 121(9) of the Foreign Service Act of 1946) in";

(2) in paragraph (2) by striking out "Ambassador" and inserting in lieu thereof "chief of mission"; and

(3) in paragraph (3)—

(A) by striking out "Ambassador to" and inserting in lieu thereof "chief of mission in"; and

(B) by striking out "the Ambassador" and inserting in lieu thereof "the chief of mission".

22 USC 802.

DETAILING OF STATE DEPARTMENT PERSONNEL

SEC. 118. Section 11(a) of the Department of State Appropriations Authorization Act of 1973 (22 U.S.C. 2685(a)) is amended—

(1) by striking out "ninety days" and inserting in lieu thereof "one year"; and

(2) by adding at the end thereof the following new sentence: "Officers and employees of the Department of State who are detailed, assigned, or otherwise made available to another Execu-

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C.

LEGISLATIVE

95TH CONGRESS 2d Session	HOUSE OF REPRESENTATIVES	REPORT No. 95-1160
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**FOREIGN RELATIONS AUTHORIZATION
ACT, FISCAL YEAR 1979**


**REPORT
OF THE
COMMITTEE ON INTERNATIONAL
RELATIONS**

[INCLUDING COST ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE]

OF
H.R. 12598

TO AUTHORIZE APPROPRIATIONS FOR FISCAL YEAR 1979 FOR
THE DEPARTMENT OF STATE, THE INTERNATIONAL COM-
MUNICATION AGENCY, AND THE BOARD FOR INTERNATIONAL
BROADCASTING, TO MAKE CHANGES IN THE LAWS RELATING
TO THOSE AGENCIES, TO MAKE CHANGES IN THE FOREIGN
SERVICE PERSONNEL SYSTEM, TO ESTABLISH POLICIES AND
RESPONSIBILITIES WITH RESPECT TO SCIENCE, TECHNOL-
OGY, AND AMERICAN DIPLOMACY, TO ESTABLISH A COMMIS-
SION ON PROPOSALS FOR A CENTER FOR CONFLICT RESOLU-
TION, TO ESTABLISH AN INSTITUTION FOR INTERNATIONAL
HUMAN RIGHTS, AND FOR OTHER PURPOSES

(3)



MAY 15, 1978.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1978

20-006

The committee has provided the full amount requested by the executive branch for a supplemental authorization of appropriations for fiscal year 1978. The additional authority is expected to be used for the following purposes: \$78,000 for the Board to pay increased compensation, to meet higher administrative support costs and to improve evaluation of RFE/RL programs; \$10,390,000 for grants to RFE/RL to offset the devaluation of the dollar beyond the amount provided in the foreign currency devaluation fund, to meet past obligations deferred from fiscal year 1977 because of unanticipated expenditures in that year, to pay higher utility costs, to further improve retirement plans as a part of the consolidation of RFE and RL and to meet higher than anticipated labor costs in Germany and Portugal.

The committee expects that the 1978 supplemental authorization will permit the discharge of all prior obligations and place RFE/RL finances on a sound current footing.

Section 303—Composition of the Board

Sections 303 (a) and (b) amend the Board for International Broadcasting Act of 1973 to make the chairman of the Board of Directors of RFE/RL, Inc. an ex-officio, non-voting, member of the Board for International Broadcasting instead of the chief operating officer of the Radios. The committee is hopeful that this change will insure a close and effective working relationship between the Board for International Broadcasting and the corporate board and management of RFE/RL, Inc.

Section 304—Representational expenses

Section 304(a) amends the Board for International Broadcasting Act of 1973 to clarify the authority of the Board directly or for the use of RFE/RL, Inc. to use funds for representational expenses not to exceed \$65,000 each fiscal year.

Section 304(b) limits the effectiveness of the authority granted under section 304 to funds appropriated after enactment of H.R. 12598.

Section 305—Technical amendments

Sections 305 (a) and (b) contain technical amendments to the Board for International Broadcasting Act of 1973 to reflect the consolidation of separate entities for Radio Free Europe and Radio Liberty into RFE/RL, Inc.

Section 306—Use of broadcasting facilities by Communist countries

Section 306 amends the Board for International Broadcasting Act of 1973 by adding a new section prohibiting the Board from providing assistance to RFE/RL, Inc. if RFE/RL, Inc. permits any casting facilities on a comparable basis. The section defines a Communist country permits RFE/RL, Inc. to use that country's broadcasting facilities on a comparable basis. The section defines a Communist country in accord with the meaning set forth in section 620 (f) of the Foreign Assistance Act of 1961.

TITLE IV—FOREIGN SERVICE AND OTHER PERSONNEL

Section 401—Definition of chief of mission

Section 401 expands the definition of Chief of Mission to include the head of any U.S. office abroad which is diplomatic in nature, such

as the U.S. liaison office in Peking, the U.S. interest section in the Swiss Embassy in Havana, and the independent reporting Consulates General in Jerusalem, Belize, and Hong Kong. By so doing, the committee intends to clarify the authority of any individual heading a diplomatic outpost of the United States, whether or not that individual is an Ambassador.

Section 402—Compensation plans for alien employees

Section 402 amends the Foreign Service Act of 1946 to authorize leave benefits for alien employees overseas in excess of those currently authorized by law, when such benefits are provided in a local compensation plan established for alien employees of the U.S. government.

The present inability of the Department of State to comply fully with maternity and sick leave provisions of certain local social insurance programs now prevents the Department from participating in such programs where participation would be otherwise feasible and desirable. Local social insurance programs are often comprehensive and frequently include health programs and various types of income maintenance programs such as sick leave and retirement. In order to participate on behalf of its local staff, the Department usually must participate in all phases of the local social insurance programs. If a particular country plan happens to provide more leave than is authorized under U.S. law, local employees of the U.S. Government are denied the opportunity to participate in any of the other programs, including retirement.

The establishment of local compensation plans under which local employees receive prevailing local wage rates and benefits tends to eliminate complaints from host governments and employees over compensation issues, and improves morale. It also avoids undesirable litigation resulting from our current inability to comply with certain labor laws and practices in foreign countries.

Section 403—Technical amendments correcting printing errors

Section 403 amends section 441(c)(1)(B) of the Foreign Service private nonprofit organizations in addition to the public organization Act, Fiscal Year 1978, to correct minor printing errors enacted last year as part of the Foreign Relations Authorization Act, fiscal year 1978.

Section 404—Assignments to public or private nonprofit organizations

Sections 404(a)(1) and (2) expand the so-called Pearson program which provides for assignments of Foreign Service officers to state and local government agencies and other public organizations for a period of at least one year. The amendment allows assignments of officers who have served at least 7, rather than 10, years to duty with private nonprofit organizations in addition to the public organizations enumerated in the act. This section also removes the prohibition that prevents an officer from being so assigned after his 15th year of service, thereby allowing such an assignment to be made any time after an officer's 7th year of service. It is the committee's view that greater exposure of Foreign Service officers to domestic U.S. organizations offers those organizations valuable talent to which they should not otherwise have access. In addition, such exposure will be of value to the Foreign Service officer and to the U.S. Government.

Section 408—Special allowances

Section 408(a) provides the Secretary of State with authority to pay compensation for extra duty required of Foreign Service officers. Recognizing the unique character of work requirements in the Foreign Service, and the fact that foreign policy crises and American citizens in trouble abroad do not observe a 5-day, 40-hour week, the committee feels that the Secretary should have discretion to compensate Foreign Service officers who work long hours in the service of their country.

The committee applauds the dedication of Foreign Service officers and their willingness to serve under harsh, often dangerous conditions. However, the U.S. Government—the people of the United States—cannot expect these officers to spend a career in the service of their country without adequate compensation. This section will insure that the Secretary may provide that compensation when he deems it to be in the interests of the Service.

The Committee on Post Office and Civil Service has advised the International Relations Committee that, from the standpoint of its jurisdiction over the Civil Service, it has no objection to enactment of this section. The exchange of letters between the committee can be found in section 407 above.

Section 408(b) makes section 408 effective October 1, 1973.

Section 409—Per diem and subsistence allowances

Section 409(a) would enable the Secretary of State to authorize travel expenses without regard to the current limitation of \$50 per day of actual subsistence or a maximum of \$35—\$50 per diem for officers on official travel to provide protective security to visiting foreign dignitaries. The change made by this section will enable the Department to authorize travel expenses equal to the cost of lodging plus \$24 per day. This conforms to Secret Service policy.

The committee notes that foreign dignitaries tend to stay in higher cost hotels where room and subsistence costs exceed the current maximum limitations for reimbursement of expenses. Persons performing protective services are required to reside near the protected foreign dignitary to afford maximum security and consequently do not have the option of selecting more modest lodgings elsewhere that would be within current per diem limitations. This section will correct this anomaly in the law.

As noted in the letter appended to section 407 above, the House Committee on Post Office and Civil Service has advised this committee that it has no objection, from the standpoint of its jurisdiction over the Civil Service, to enactment of this section.

Section 409(b) makes section 409 effective October 1, 1978.

Section 410—Responsibilities of a chief of mission

Section 410 substitutes "Chief of Mission" for "Ambassador" in the enumeration of responsibilities of the head of a U.S. mission abroad. While an Ambassador may be the Chief of Mission, a Chief of Mission may not necessarily have the rank of Ambassador. In practice, when the Ambassador is away from his post, or when there is a vacancy in that position, the Deputy Chief of Mission becomes the Chief of Mission.

It is vital to the foreign policy interests of the United States that the person actually in charge of a U.S. diplomatic mission be fully

recognized as the chief U.S. representative in the absence of an Ambassador. The change made by this section ensures that a Chief of Mission, whoever that person is at any given moment, will possess the authority to act in the absence of an Ambassador.

Section 411—Detailed State Department personnel

Section 411 extends to one year the maximum period an officer or employee of the Department of State can be detailed to another executive agency without reimbursement to the State Department. It also requires that, in such cases, the officer or employee shall not be counted toward any personnel ceiling of the Department.

The effect of this section is to expand the program under which personnel of the Department of State—and other executive agencies—are detailed between the Department and these agencies. This practice provides personnel of the Department with wider experience in the functioning of the U.S. Government and also provides for better coordination between departments and agencies working together on given issues. In order to enable the Department to replace people who have been detailed to other agencies, the section requires that officers and employees so detailed shall not be counted toward any personnel ceiling of the Department.

This authority is provided to enable State Department personnel to avail themselves of experience outside of the Department which will make such personnel of greater value to the Department in discharging its assigned responsibilities and provide to other agencies personnel and skills unique to the Department of State. It is not the intention of the committee in granting this authority that it be used to detail State Department personnel to increase the personnel or staff of another office or agency for purposes not related to the administration, organization, and conduct of American foreign policy.

Section 412—Compensatory time off at posts in foreign areas

Section 412(a) would permit U.S. employees to be granted compensatory time off in lieu of premium pay for regularly scheduled overtime work in certain limited situations abroad. Present law provides for the granting of compensatory time off only for irregular or occasional overtime work. This amendment would not deny to employees any rights they now have to be given premium pay for overtime work. It would permit them, in certain situations, to elect compensatory time off in lieu of premium pay if they so choose.

Paragraph (1) of the amendment contained in this section applies to employees assigned to remote and desolate posts whose functions are required to be maintained on a substantially continuous basis. It would permit employees assigned to such posts an opportunity to use accumulated compensatory time to travel to places which offer relief from the harsh conditions of the assignment.

The Sinai Field Mission is the best example of such a post at the present time. It is situated in the demilitarized Buffer Zone of the western Sinai Desert more than four hours' drive from the nearest population center.

Paragraph (2) of the amendment contained in this section would apply at posts in foreign areas where special local conditions make it desirable for employees to schedule their work week on other than the usual five 8-hour days. This would permit closer conformity to

a. Foreign Service Act of 1946, as amended

Public Law 79-724 [H.R. 6967], 60 Stat. 999; 22 U.S.C. 800 et seq., approved August 13, 1946; as amended by Public Law 81-73 [S. 1704], 63 Stat. 111, approved May 26, 1949; P.L. 81-160 [H.R. 5100], 63 Stat. 407, approved July 6, 1949; P.L. 82-233 [S. 1045], 65 Stat. 672, approved October 30, 1951; P.L. 83-759 [H.R. 9910], 68 Stat. 1051, approved August 31, 1954; P.L. 84-22 [H.R. 4941], 69 Stat. 24, approved April 5, 1955; P.L. 84-250 [S. 2237], 69 Stat. 536, approved August 5, 1955; P.L. 84-726 [H.R. 11356], 70 Stat. 555, approved July 18, 1956; P.L. 84-823 [S. 3431], 70 Stat. 704, approved July 28, 1956; P.L. 85-462 [S. 734], 72 Stat. 203, approved June 20, 1958; P.L. 85-477 [H.R. 12181], 72 Stat. 261, approved June 30, 1958; P.L. 86-108 [H.R. 7500], 73 Stat. 246, approved July 14, 1959; P.L. 86-568 [H.R. 9883], 74 Stat. 296, approved July 1, 1960; P.L. 86-707 [H.R. 7753], 74 Stat. 795, approved September 6, 1960; P.L. 86-723 [S. 2633], 74 Stat. 831, approved September 8, 1960; P.L. 87-195 [S. 1983], 75 Stat. 424, approved September 4, 1961; P.L. 87-793 [H.R. 7927], 76 Stat. 832, approved October 11, 1962; P.L. 88-205 [H.R. 7885], 77 Stat. 379, approved December 16, 1963; P.L. 88-426 [H.R. 11049], 78 Stat. 400, approved August 14, 1964; P.L. 89-301 [H.R. 10281], 79 Stat. 1111, approved October 29, 1965; P.L. 89-308 [H.R. 4170], 79 Stat. 1129, approved October 31, 1965; Reorganization Plan No. 4 of 1965 [30 F.R. 9353, July 28, 1965]; P.L. 89-348 [S. 2150], 79 Stat. 1310, approved November 8, 1965; P.L. 89-504 [H.R. 14122], 80 Stat. 288, approved July 18, 1966; P.L. 89-554 [H.R. 10104], 80 Stat. 378, approved September 6, 1966; P.L. 89-673 [S. 2463], 80 Stat. 932, approved October 15, 1966; P.L. 90-205 [H.R. 7977], 81 Stat. 632, approved December 16, 1967; P.L. 90-221 [S. 1785], 81 Stat. 671, approved December 23, 1967; P.L. 90-494 [S. 633], 82 Stat. 810, approved August 20, 1968; P.L. 91-201 [H.R. 14789], 84 Stat. 17, approved February 28, 1970; P.L. 91-231 [S. 3690], 84 Stat. 195, approved April 15, 1970; P.L. 91-656 [H.R. 13000], 84 Stat. 1946, approved January 8, 1971; P.L. 92-352 [H.R. 14734], 86 Stat. 489, approved July 13, 1972; P.L. 93-126 [H.R. 7645], 87 Stat. 451, approved October 18, 1973; P.L. 93-475 [S. 3473], 88 Stat. 1439, approved October 26, 1974; P.L. 94-141 [S. 1517], 89 Stat. 756, approved November 29, 1975; P.L. 94-350 [S. 3163], 90 Stat. 823, approved July 12, 1976; and by Public Law 95-105 [H.R. 6689], 91 Stat. 844 at 852, approved August 17, 1977.

AN ACT To improve, strengthen, and expand the Foreign Service of the United States and to consolidate and revise the laws relating to its administration.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—SHORT TITLE, OBJECTIVES, AND DEFINITIONS

PART A—SHORT TITLE

SEC. 101. Titles I to X, inclusive, of this Act may be cited as the "Foreign Service Act of 1946."

(504)

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PART B--OBJECTIVES

SEC. 111. The Congress hereby declares that the objectives of this Act are to develop and strengthen the Foreign Service¹ of the United States so as--

(1) to enable the Foreign Service effectively to serve abroad the interests of the United States;

(2) to insure that the officers and employees of the Foreign Service are broadly representative of the American people and are aware of and fully informed in respect to current trends in American life;

(3) to enable the Foreign Service adequately to fulfill the functions devolving on it by reason of the transfer to the Department of State of functions heretofore performed by other Government agencies;

(4) to provide improvements in the recruitment and training of the personnel of the Foreign Service;

(5) to provide that promotions leading to positions of authority and responsibility shall be on the basis of merit and to insure the selection on an impartial basis of outstanding persons for such positions;

(6) to provide for the temporary appointment or assignment to the Foreign Service of representative and outstanding citizens of the United States possessing special skills and abilities;

(7) to provide salaries, allowances, and benefits that will permit the Foreign Service to draw its personnel from all walks of American life and to appoint persons to the highest positions in the Service solely on the basis of their demonstrated ability;

(8) to provide a flexible and comprehensive framework for the direction of the Foreign Service in accordance with modern practices in public administration; and

(9) to codify into one Act all provisions of law relating to the administration of the Foreign Service.

PART C--DEFINITIONS²

SEC. 121. When used in this Act, the term--

(1) "Service" means the Foreign Service of the United States;

(2) "Secretary" means the Secretary of State;

(3) "Department" means the Department of State;

(4) "Government agency" means any executive department, board, bureau, commission, or other agency in the executive branch of the Federal Government, or any corporation wholly owned (either directly or through one or more corporations) by the United States;

(5) "Government" means the Government of the United States of America;

(6) "Continental United States" means the States and the District of Columbia;

(7) "Abroad" means all areas not included in the continental United States as defined in paragraph (6) of this section;

¹ Public Law 90-494 (82 Stat. 810), approved August 20, 1968 (see page 475) reads "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby established a category of officers of the United States Information Agency (hereinafter referred to as "the Agency") to be known as Foreign Service Information officers."

² Section 12 of Public Law 90-494 (82 Stat. 810), August 20, 1968, construes terms differently for purposes of Public Law 90-494.

(8) "Principal officer" means the officer in charge of an embassy, legation, or other diplomatic mission or of a consulate general, consulate, or vice consulate of the United States; and

(9) "Chief of mission" means a principal officer appointed by the President, by and with the advice and consent of the Senate, to be in charge of an embassy or legation or other diplomatic mission of the United States, or any person assigned under the terms of this Act to be minister resident, charge d'affaires, commissioner, or diplomatic agent.

TITLE II—GOVERNING BODIES FOR THE DIRECTION OF THE SERVICE

PART A—OFFICERS

DIRECTOR GENERAL

SEC. 201.³ The Service shall be administered by a Director General of the Foreign Service, hereinafter referred to as the Director General, who shall be appointed by the Secretary from among Foreign Service officers in the class of career minister or in class 1. Under the general supervision of the Secretary and the Assistant Secretary of State in charge of the administration of the Department, the Director General shall, in addition to administering the Service and performing the duties specifically vested in him by this or any other Act, coordinate the activities of the Service with the needs of the Department and of other Government agencies and direct the performance by officers and employees of the Service of the duties imposed on them by the terms of any law or by any order or regulation issued pursuant to law or by any international agreement to which the United States is a party.

SEC. 202. [Repealed by P.L. 81-73 (63 Stat. 111; 22 U.S.C. 811a).]

[PART B—BOARDS⁴

[BOARD OF THE FOREIGN SERVICE

[SEC. 211. (a) The Board of the Foreign Service shall be composed of the Assistant Secretary of State in charge of the administration of

³ As amended by section 3 of Public Law 81-73 (63 Stat. 111; 22 U.S.C. 811a), which reads as follows: "The Secretary of State, or such person or persons designated by him, notwithstanding the provisions of the Foreign Service Act of 1946 (60 Stat. 909) or any other law, except where authority is inherent in or vested in the President of the United States, shall administer, coordinate, and direct the Foreign Service of the United States and the personnel of the State Department. Any provisions in the Foreign Service Act of 1946, or in any other law, vesting authority in the 'Assistant Secretary of State for Administration', the 'Assistant Secretary of State in Charge of the Administration of the Department', the 'Director General', or any other reference with respect thereto, are hereby amended to vest such authority in the Secretary of State." The Deputy Under Secretary for Administration at present serves as Chairman of the Board of the Foreign Service.

⁴ The functions under sec. 211 and 212 were transferred to the President under the Reorganization Plan No. 4 of 1965.

Executive Order 11264, effective January 1, 1966, 31 F.R. 67, established the Board of Foreign Service and the Board of Examiners for the Foreign Service, and delegated to the Secretary of State certain additional functions. (See Vol. II, page 71.)

Executive Order 11434, effective August 20, 1968, 33 F.R. 16485, provided Board of the Foreign Service and Board of Examiners for the Foreign Service established by Executive Order 11434, as hereinafter amended, shall exercise with respect to Foreign Service officers the functions delegated to them by that order with respect to Foreign Service officers. (See page 710.)

Executive Order 11636, effective December 17, 1971, 36 F.R. 24901, provided the Board of the Foreign Service with a number of specific functions in labor-management relations. (See page 591.)

LEGISLATIVE DOCUMENT


95TH CONGRESS }
2d Session }

SENATE

REPORT
No. 95-842

FOREIGN RELATIONS AUTHORIZATION ACT,
FISCAL YEAR 1979

REPORT
OF THE
COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE
TOGETHER WITH ADDITIONAL VIEWS
ON
S. 3076
TO AUTHORIZE APPROPRIATIONS FOR THE DEPARTMENT OF
STATE, THE INTERNATIONAL COMMUNICATION AGENCY, AND
THE BOARD FOR INTERNATIONAL BROADCASTING



MAY 15 (legislative day, APRIL 24), 1978. —Orde

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States policy had become more favorably disposed toward Communist participation in West European governments.

Over the period since enactment of this provision, the Administration has chosen to admit to the United States, in addition to certain West European Communists, certain members of the Palestine Liberation Organization, a "proscribed organization" long associated with acts of international terrorism. Having become aware of these visits, many Americans appear, by indication of mail received by the committee, to have inferred that the provision enacted last year has facilitated the entry into this country of foreign terrorists. For two important reasons, this is not the case. The first is that the Secretary of State retains a wide variety of grounds on which to base a negative recommendation on a visa application, such that any possibility that a prospective visitor might pose a threat of any kind to U.S. security continues to be a valid basis for exclusion. The second reason is that the Attorney General, under the President's direction, continues to be the actual grantor of the visa; thus, notwithstanding the provision enacted last year, an Administration continues to have full flexibility in its visa decisions. To make this even clearer, however, section 118 of this year's bill, initiated by Senator McGovern, adds to the provision enacted last year the following sentence: "Nothing in this section may be construed as authorizing or requiring the admission to the United States of any person who is excludible for reasons other than membership in or affiliation with a proscribed organization." Section 118 also substitutes the word "shall" for the word "should" in the provision enacted last year—which is only a perfecting change, in that the Administration has construed the provision in its present form as being mandatory.

Section 119. Authority and Responsibility of United States Chiefs of Mission.

The principal purpose of this section, which was initiated by Senators McGovern and Biden, is to clarify beyond any doubt the meaning of a provision of law, enacted in 1974 at the initiative of Senators Muskie and Case, setting forth the authority and responsibility of U.S. ambassadors. Included in that provision was the following stipulation:

Any department or agency having officers or employees in a country shall keep the United States Ambassador to that country fully and currently informed with respect to all activities and operations of its officers and employees in that country, and shall insure that all of its officers and employees, except for personnel under the command of a United States area military commander, comply fully with all applicable directives of the Ambassador.

The committee believes that this language makes amply clear that all employees of the U.S. Government, regardless of agency, are obligated to keep the Ambassador fully informed as to their activities. The committee is also aware, however, that the provision was not faithfully implemented upon enactment and that, when efforts toward that end were undertaken during the current Administration, a lengthy discussion ensued between certain executive branch agencies

dropped
at
conference

as to the meaning of the provision and its relationship to other statutes, such as the National Security Act of 1947, under which the Director of Central Intelligence is prohibited from disclosing sensitive intelligence information unless authorized by law. The purpose of this section is to make clear that the 1974 statute constitutes such authorization and is to be implemented—in the words added by this section—"notwithstanding any other law." (This, the committee notes, is consistent with the finding of the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities. In its final report, issued in April 1976, the select committee declared that "the [1974] statute resolves any doubts as to whether disclosure to the Ambassador is authorized.") Noting that the 1974 statute provides that the Ambassador shall exercise his authorities "under the direction of the President," the committee intends that the effect of the statute is to authorize and require regular disclosure to the Ambassador except where specifically and explicitly provided by a contrary Presidential directive.

This section also makes a technical amendment to the original provision—substituting the term "Chief of Mission" for "Ambassador."

Section 120. Reducing Family Separations

Upon returning from an overseas assignment, a Foreign Service officer or employee usually takes home leave. Before taking this leave, however, the officer or employee often spends time in Washington receiving training, orientation, or doing other temporary duty. At present, the officer or employee is not, under such circumstances, compensated for the travel expenses of bringing his family with him to Washington, regardless of the length of such temporary duty. This section, initiated by Senator McGovern, would change existing law to authorize the Secretary of State, under such regulations as he shall prescribe, to pay such travel expenses where appropriate. The result would be to reduce the occurrence of extended and unnecessary family separations, and to afford family members greater opportunity to participate in special reentry and family workshops at the Foreign Service Institute or—in the case of another, impending foreign assignment—to participate in appropriate language or area training. The costs of such travel will depend upon the provisions of regulations to be prescribed by the Secretary, but in the committee's view are of the kind which should be borne by the U.S. Government.

Section 121. Language Training for Foreign Service Dependents

Last year, at the initiative of Senator McGovern, the committee approved a provision, subsequently enacted, which called upon the Secretary of State to make greater use of existing authorities so as to provide additional language training opportunities to family members of Foreign Service personnel. In the committee's view, the entire Foreign Service family plays an important role in U.S. diplomatic representation abroad, and it follows from this that it is in the national interest not only for a Foreign Service official, but also for his family, to have fluency in the language of the country to which he is assigned. The provision in last year's bill called upon the Secretary of State to report to Congress on steps taken to increase language training for dependents, and the Committee has been pleased to learn from the resulting report that effective measures have been undertaken.

95TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } No. 95-1535

FOREIGN RELATIONS AUTHORIZATION ACT,
FISCAL YEAR 1979

SEPTEMBER 6, 1978.--Ordered to be printed

Mr. FASCELL, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 12598]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 12598) to authorize appropriations for fiscal year 1979 for the Department of State, the International Communication Agency, and the Board for International Broadcasting, to make changes in the laws relating to those agencies, to make changes in the Foreign Service personnel system, to establish policies and responsibilities with respect to science, technology, and American diplomacy, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Foreign Relations Authorization Act, Fiscal Year 1979".

TITLE I--DEPARTMENT OF STATE

AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1979

SEC. 101. (a) There are authorized to be appropriated for the Department of State for the fiscal year 1979 to carry out the authorities,

Act of 1948 shall apply to all broadcasts of the Voice of America without regard to any policies of distorting the truth, including censorship, of governments of countries to which the Voice of America broadcasts. (Section 503 states that "VOA will serve as a consistently reliable and authoritative source of news. VOA news will be accurate, objective, and comprehensive.")

The House bill did not contain a comparable provision.

The conference substitute contains no provision on this issue.

The committee of conference judged that, since the essence of the Senate provision is in existing law, the provision would have been redundant.

COMPOSITION OF THE BOARD FOR INTERNATIONAL BROADCASTING (BIB)

The House bill amended the Board for International Broadcasting Act of 1973 to make the Chairman of the Board of Directors of RFE/RL, Inc. (Radio Free Europe and Radio Liberty), instead of the chief operating officer of the radios, an ex-officio, nonvoting member of the Board.

The Senate amendment did not contain a comparable provision.

The conference substitute amends the Board for International Broadcasting Act of 1973 to make both the Chairman of the Board of Directors of RFE/RL, Inc., and the chief operating officer of the radios ex-officio, nonvoting members of the Board for International Broadcasting.

BIB REPRESENTATIONAL EXPENSES

The House bill amended the Board for International Broadcasting Act of 1973 to clarify the authority of the Board directly or for RFE/RL, Inc., to use appropriated funds for representational expenses, but limited the use of such funds for this purpose to \$65,000 each fiscal year.

The Senate amendment did not contain a comparable provision.

The conference substitute is essentially the same as the Senate provision.

DISCLOSURE OF CONTRIBUTIONS TO BIB

The Senate amendment amended the Board for International Broadcasting Act of 1973 to make clear that the requirement of full and timely disclosure of contributions applies not only to contributions to RFE/RL, Inc., itself, but also to any fund or foundation expressly created to solicit or receive contributions on behalf of RFE/RL, Inc.

The House bill did not contain a comparable provision.

The conference substitute is essentially the same as the Senate provision.

DEFINITION OF CHIEF OF MISSION

The House bill contained a provision which expanded the definition of "Chief of Mission" to include the head of any U.S. office abroad which is diplomatic in nature, in order to clarify the authority of any individual heading a diplomatic outpost of the United States, whether or not that person is an Ambassador.

The Senate amendment did not contain a comparable provision.

The conference substitute is identical to the House provision.

that in applying this new authority, the Secretary of State should insure that no officer working in the immediate office of a Principal Officer (i.e., persons paid at Executive Levels I, II, or III) of the Department of State, the International Communication Agency, and the Agency for International Development, would benefit from the special allowance; and (b) that the grades of the positions eligible for consideration for the special allowance should be limited to Foreign Service officers in classes 8 through 4.

REPORTING TO A CHIEF OF MISSION

The Senate amendment reaffirmed existing law, which requires all employees of the U.S. Government stationed abroad, regardless of agency, to keep the Chief of Mission fully informed as to their activities. The amendment did so by adding to existing law the phrase, "notwithstanding any other provision of law."

The House bill did not contain a comparable provision.

The conference substitute contains no provision on this issue. The committee of conference decided to delete the Senate provision in light of the administration's agreement that the "Authority of Ambassador" provision in existing law "means that disclosure of intelligence information to Ambassadors is authorized within the meaning of the National Security Act of 1947." The principal purpose of the Senate amendment was to make that clear.

DETAILING OF STATE DEPARTMENT PERSONNEL

The House bill extended from 90 days to 1 year the maximum period an officer or employee of the Department of State can be detailed to another executive agency without reimbursement to the Department. It also required that these detailed officers and employees not be counted toward any personnel ceiling imposed on the Department.

The Senate amendment did not contain a comparable provision.

The conference substitute is identical to the House provision. In approving this provision, the committee of conference wishes to make clear its intent that the number of employees detailed under this authority continue to be limited, that the personnel ceiling of the Department administratively imposed by the Office of Management and Budget not be reduced by reason of this provision, and that any non-reimbursable assignments under this authority not made pursuant to an exchange agreement with another executive agency and which exceed 90 days be reported to the Committees on Foreign Relations and International Relations.

PERSONNEL REQUIREMENTS AND COMPENSATION

The Senate amendment stated the finding of Congress that despite the steady expansion of U.S. diplomatic representation abroad, the total number of State Department personnel has not increased and, although the responsibilities and necessary qualifications for Foreign Service positions continue to change, compensation for such personnel remains linked to that of the General Schedule employees. The Senate amendment further expressed the sense of Congress that the